

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

CONNOR ALBERT DAVIS,

Defendant and Appellant.

C081064

(Super. Ct. No. CR57261)

Defendant Connor Albert Davis pleaded no contest to failing to register as a transient sex offender. (Pen. Code, § 290.011, subd. (a).) Defendant subsequently moved to withdraw his plea. The trial court denied his motion and sentenced defendant

to three years in state prison in accordance with his plea agreement. Defendant appeals, having obtained a certificate of probable cause.

Defendant's sole contention on appeal is that the trial court erred in failing to conduct a *Marsden*¹ hearing after he requested one. We agree the court erred. Accordingly, we reverse and remand the matter with directions.

DISCUSSION²

Defendant asserts reversal is required because the trial court failed to conduct a *Marsden* hearing prior to sentencing. We agree.

“[A] trial court must conduct . . . a *Marsden* hearing only when there is at least some clear indication by the defendant, either personally or through counsel, that the defendant wants a substitute attorney. . . . [I]f a defendant requests substitute counsel and makes a showing during a *Marsden* hearing that the right to counsel has been substantially impaired, substitute counsel must be appointed as attorney of record for all purposes.” (*People v. Sanchez* (2011) 53 Cal.4th 80, 84 (*Sanchez*)). “[A]t any time during criminal proceedings, if a defendant requests substitute counsel, the trial court is obligated . . . to give the defendant an opportunity to state any grounds for dissatisfaction with the current appointed attorney. [Citation.]” (*Id.* at p. 90, fn. omitted.)

“When a defendant seeks new counsel on the basis that his appointed counsel is providing inadequate representation[,] . . . the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of inadequate performance. A defendant is entitled to relief if the record clearly shows that the

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

² We dispense with a recitation of the underlying facts related to defendant's conviction as they are irrelevant to resolution of the sole issue on appeal.

appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.” (*People v. Smith* (2003) 30 Cal.4th 581, 604.) “We review the denial of a *Marsden* motion for abuse of discretion. [Citation.]” (*People v. Taylor* (2010) 48 Cal.4th 574, 599.)

We conclude defendant unequivocally invoked his *Marsden* rights when he submitted a letter to the trial court that included the following language: “I, . . . - ask Legal Request services for a Marsden motion[.] [¶] . . . [¶] This is the Third time writting [*sic*] to the court trying to get Information, first time asking for a new attorney. [¶] When Marsden motion get to me, I will fill-out [*sic*] and to court on Legal-format stating [*sic*] the same wilfull [*sic*] misconduct, attorney malpractice, attorney negligence, cruel and unusual punishment, emotional distress.” (See *People v. Rivers* (1993) 20 Cal.App.4th 1040, 1051, fn. 7 [request under *Marsden* must be “clear and unequivocal”].) The letter also described specific instances where defendant believed trial was providing incompetent counsel.

Under these circumstances, the trial court was obligated to conduct a *Marsden* hearing and make a record that defendant’s complaints had been adequately aired and considered. (See *Sanchez, supra*, 53 Cal.4th at pp. 89-90; *People v. Kelley* (1997) 52 Cal.App.4th 568, 579-580.) Its failure to do so was error.

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions that “ ‘(1) the court shall hold a hearing on [defendant]’s *Marsden* motion concerning his representation . . .; (2) if the court finds that [defendant] has shown that a failure to replace his appointed attorney would substantially impair his right to assistance of counsel, the court shall appoint new counsel to represent him and shall entertain such applications as newly appointed counsel may make; and (3) if newly appointed counsel makes no motions, any motions made are denied, or [defendant]’s *Marsden* motion is

denied, the court shall reinstate the judgment.’ ” (*Sanchez, supra*, 53 Cal.4th at pp. 92-93.)

/s/
Blease, J.

We concur:

/s/
Raye, P. J.

/s/
Robie, J.